



17 MAR 2008

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AUSTIN TX 78701

In re Application of :
FOURNAND et al. :
Application No.: 10/598,979 : DECISION
PCT No.: PCT/EP2005/002875 :
Int. Filing Date: 16 March 2005 :
Priority Date: 17 March 2004 :
Attorney Docket No.: ESSR:124US/10612008 :
For: OPTICAL LENS HOLDER :

This decision is in response to applicants' renewed petition under 37 CFR 1.181 filed in the United States Patent and Trademark Office (USPTO) on 19 February 2008 and to applicants' request for refund filed 06 March 2008.

BACKGROUND

On 16 March 2005, applicants filed international application PCT/EP2005/002875, which designated the U.S. and claimed a priority date of 17 March 2004. A copy of the international application was communicated to the USPTO from the International Bureau on 29 September 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 18 September 2006 (17 September 2006 being a Sunday).

On 15 September 2006, applicants filed, *inter alia*, a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 11 May 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF INSUFFICIENT FEES indicating, *inter alia*, that additional claim fees, the search fee, the examination fee, and the surcharge under 37 CFR 1.492(h) were required. The Notification set a TWO (2) MONTH extendable period for reply.

On 11 December 2007, applicants filed a submission which included the additional claim fees and the surcharge as well as a petition under 37 CFR 1.181.

On 12 February 2008, a decision was mailed dismissing applicants' petition under 37 CFR 1.181 for failure to provide a copy of the docket record where the non-received Office action would have been entered had it been received.

On 19 February 2008, applicants filed a renewed petition under 37 CFR 1.181 including a copy of a docket record showing where the non-received Office action would have been entered had it been received.

On 06 March 2008, applicants filed a request for refund asking that the \$370 charged to Deposit Account 50-1212 on 18 December 2007 for multiple dependent claims be refunded.

DISCUSSION

Petition Under 37 CFR 1.181

The petition requests a refund of the five-month extension of time fee paid on 11 December 2007 because applicants purportedly did not receive the NOTIFICATION OF INSUFFICIENT FEES mailed 11 May 2007. This request is based on a failure to receive an Office action. See MPEP § 711.03(c), para. I.A. The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

As noted in the decision mailed 12 February 2008, items (1) and (2) have been satisfied.

Item (3) has now been satisfied. Accordingly, the extension of time fee paid on 11 December 2007 has been credited to Deposit Account 50-1212.

Request for Refund

The multiple dependent claim fee of \$370 charged on 18 December 2007 to Deposit Account 50-1212 was charged in error. The Deposit Account has been credited.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **GRANTED**.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web or if mailed should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application.

/Daniel Stemmer/

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